the tattooist was not called in view of the fact that this was a Kuala Lumpur case and that the tattooist was alleged to be in Singapore.

I consider it proper for me to take judicial notice of the fact that evidence has previously been given in the Courts that in Singapore there are books containing tattoo-designs some of which are applicable to secret societies — see the report of the case of *Tan Ah Leng v. R.*[2].

The tattoo marks on the accused's shoulder had been partly burnt off. This corroborated his evidence that he had become aware of the nature of the designs and had wished to remove them from his body. His explanation that he was afraid to go to the police and ask for their help in removing these marks was reasonable in view of the appellant's apparent station in society.

Although not convinced of the truth of this explanation I consider it is one which the Court was bound to accept and I accordingly acquit him.

Appeal allowed.

PUBLIC PROSECUTOR v. EU TONG SEN FINANCE CO. LTD.

[A. Cr. J. (Hepworth J.) October 10, 1957]

[J. B. — Criminal Appeal No. 22 of 1957]

Dangerous Drugs — Raw opium — Importation — Forfeiture of vehicle used therefor — Motor car under Hire Purchase Agreement — Dangerous Drugs Ordinance, 1952, s. 30.

This was an appeal against an Order in respect of a motor car used for the commission of an offence of importing raw opium into the Federation contrary to the Dangerous Drugs Ordinance, 1952. The car was lent to the accused by T who in turn had obtained it from the respondents under a Hire Purchase Agreement. The accused was convicted and the Court directed the Customs to issue a notice to the owner of the motor car to show cause why the car should not be forfeited in accordance with the provisions of section 30 of the Ordinance. The respondents and T appeared at the hearing in pursuance of the notice and the President ordered the car to be returned to the respondents.

On appeal by the Public Prosecutor it was argued that the Agreement between T and the respondents which purported to be a Hire Purchase Agreement was not in fact a Hire Purchase Agreement and that T had not denied that she had permitted the use of the vehicle for the purpose of carrying opium. The respondents maintained that the appellant was not entitled to look behind the Agreement and that T, the hirer, had committed a breach of cl. 5(b) of the Agreement by permitting the use of the vehicle in contravention of a Statute.

Held: (1) in this case there was no evidence that the offence had been committed with the knowledge, consent or connivance of T. That being so, if the Agreement was a Hire Purchase Agreement she had not committed a breach of it;

(2) if on the other hand the Agreement was not a Hire Purchase Agreement but a security for a loan it was unenforceable because it did not comply with the provisions of the Bills of Sale Enactment. In either event T was entitled to possession of the vehicle. The Order of the President was therefore wrong.

Case referred to:—

(1) *Public Prosecutor v. Patani Motors* (1957) M.L.J. 129.

MAGISTRATE'S CRIMINAL APPEAL.

Babaudin bin Yaacob (Federal Counsel) for the appellant.

K. S. Chung for the respondent

Hepworth J.: — On the 25th May, 1957, one Goh Say Chee was convicted in the Sessions Court, Johore Bahru, of importing into the Federation in a motor car some 105 lbs. 2 ozs. of raw opium, an offence under the Dangerous Drugs Ordinance, 1952, and was sentenced to two years imprisonment. At the conclusion of the case the Court directed the Customs to issue a notice to the owner of the motor car to show cause why such motor car should not be forfeited in accordance with the provisions of section 30 of the Dangerous Drugs Ordinance, 1952.

It is not clear to whom this notice was addressed as, at the subsequent inquiry, it was not produced and the record contained no copy, but nevertheless the two persons concerned, that is one Madam Tan Geok Khim and the respondent Company, the "Hirer" and the "Owners" respectively under a Hire Purchase Agreement, both appeared at the hearing. The learned President decided that the person entitled to the possession of the vehicle was the respondent Company and ordered accordingly.

From this order of the learned President the learned Deputy Public Prosecutor appealed on the ground that the learned President was wrong in law because the Agreement between Madam Tan Geok Khim and the respondent Company which purported to be a Hire Purchase Agreement was not in fact a Hire Purchase Agreement at all, and as a result in the particular circumstances of the case gave the respondents no rights in the car whatsoever. On being asked by the Court what the appellant's view of the position was if the Agreement was held to be a Hire Purchase Agreement, the learned Deputy Public Prosecutor stated that Madam Tan Geok Khim had not denied that she had permitted the use of the vehicle for the purpose of carrying opium and the evidence showed that she had at least connived at the commission of the offence. Accordingly she was not entitled to the return of the car whatever the Agreement was.

The respondents maintained that the onus placed upon them by sub-sections (2) and (3) of section 30 of the Ordinance had been satisfied when the respondents showed that there was a Hire Purchase Agreement in existence and that it was then for the appellant to show that what the respondents stated was incorrect; in other words, the onus then shifted back to th

appellant to show that what the respondents maintained was untrue. The respondents at the same time stated that the appellant was not entitled to look behind the Hire Purchase Agreement unless he could prove by evidence that it was not a Hire Purchase Agreement, which he had failed to do.

The respondents further maintained, when asked by the Court, that clause 5(b) of the Agreement meant that if Madam Tan Geok Khim, the Hirer, permitted the vehicle to be used and it was then used in contravention of any Statute, etc. she had committed a breach of that clause and accordingly clause 6 was applicable.

The operative words in clause 5(b) of the Hire Purchase Agreement are: "The Hirer during the hiring . . . . will not during the hiring use or permit to be used the vehicle in contravention of any Statute, Ordinance, Enactment or regulation for the time being in force or in any manner by reason of which the vehicle may become liable to seizure confiscation or forfeiture or otherwise in any way contrary to law".

The operative part of clause 6 of the Agreement reads: "if the Hirer . . . . shall not duly observe and perform the several provisions of this Agreement, then in any such case it shall be lawful at any time or times thereafter (subject to any Statutory restrictions to the contrary) for the Owners forthwith to terminate the hiring and/or the Agreement, and to seize the Vehicle, and such termination of the hiring and/or the Agreement or seizure shall be without prejudice to any right, remedy or claim for damages of the Owners then accrued including the liability of any Guarantor to the Owners."

These provisions are substantially similar to those contained in the Hire Purchase Agreement in the case of *Public Prosecutor v. Patani Motors*[1] and the facts in that case were similar to those in this case except that in that case the hirer was himself the person who had been convicted of the offence under the Dangerous Drugs Ordinance. In this case it was not the hirer who had been convicted but the person to whom the hirer had lent the motor car.

It has not been maintained that Madam Tan Geok Khim used the vehicle herself, and accordingly the question arises as to whether her allowing the convicted person to use the vehicle constituted a breach of the provisions of clause 5 of the Agreement. There was no evidence to show that she had any knowledge of the criminal purpose for which the person used the car. It seems to me that the words "permit to be used the vehicle in contravention of any Statute, Ordinance, Enactment or regulation for the time being in force" must import to the hirer, for a breach of the Agreement to have been committed, some knowledge of the purpose for which the vehicle was to be used which would constitute a contravention of any Statute, etc. There was no evidence that the offence had been committed with the knowledge, consent or connivance of Madam Tan Geok Khim.

This case can therefore be distinguished from *Public Prosecutor v. Patani Motors*[1] because in this case the hirer was not the guilty party. That being so, if the Agreement is a Hire Purchase Agreement, it seems to me that she has not committed a breach of any part of this Agreement, and the respondents cannot therefore invoke the provisions of clause 6 of the Agreement. If on the other hand the Agreement is not a Hire Purchase Agreement but is, as the learned Deputy maintained, merely security for a loan, then it is unenforceable because it does not comply with the provisions of the Bills of Sale Enactment. In either event it is Madam Tan Geok Khim who is entitled to the possession of the vehicle and not the respondents. It is therefore unnecessary for me to decide whether or not the Agreement is a Hire Purchase Agreement.

The learned President was wrong therefore in ordering the return of the motor car to the respondents. The owner for the purposes of sub-section (7) of section 30 of the Ordinance was Madam Tan Geok Khim — and she was an innocent owner. I accordingly quash the order of the learned President and order the return of the motor car to Madam Tan Geok Khim.

Order accordingly.

Solicitors: *Murphy, Dunbar & Chung.*

SUBCHENT KAUR v. CHAI SAU KIAN

[O. C. J. (Smith J.) June 20, 1957]

[Seremban — Originating Summons No. 2 of 1957]

Moneylending — Registered moneylender — Moneylenders Ordinance, 1951, s. 16(1) — Recovery of amount due under charge.

The intention of section 16(1) of the Moneylenders Ordinance, 1951 is that the borrower should be given by the lender for retention written particulars of the loan and its terms so that there may never be at any time dispute concerning the amount of the loan or its terms. Mere temporary physical delivery of a memorandum of charge for the purpose of execution by the borrower does not constitute delivery for the purpose of section 16(1) since there is no intention that the document shall be retained by the borrower.

ORIGINATING SUMMONS.

P. Hall for the applicant.

Edgar Joseph Jr. for the respondent.

Smith J. : — In this case the applicant, a registered moneylender, prays for an order that certain land charged to her by the respondent be sold for the recovery of the amount due under the charge.